

Pursuant to the directives of the response filed 9/18/09, claim 83 has been amended.

Claims 83, 87, 88, 114-149 remain pending. Claims 114-149 remain withdrawn from consideration, as they do not encompass the elected peptide (Leu-enkephalin-(Lys)₆; elected on 8/24/00).

Claims 83, 87, 88 are examined in this Office action.

Applicants' arguments filed 10/3/07 have been considered and found persuasive.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action.

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 83 is rejected under 35 U.S.C. §102(b) as being anticipated by Li (USP 4,096,237) or Li (USP 4,038,222).

Li ('237) discloses two peptides in column 1; Li ('222) discloses one peptide in column 1. In each case the peptide comprises the following sequence:

YGGFMTSEK

As applicants will no doubt recognize (given the elected specie), the pentapeptide YGGFM is Met-enkephalin. As for the tetrapeptide sequence T-S-E-K, this meets the requirements of substituent variable “Z” (instant claim 1), where “Z” is option (v), i.e., Xaa_p-Lys_q, where “p” is 3 and “q” is one, further wherein Xaa_p is Thr-Ser-Glu. Thus, the claim is anticipated.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Lukton whose telephone number is 571-272-0952. The examiner can normally be reached Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached at (571)272-0562. The fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

/David Lukton/

Primary Examiner, Art Unit 1654